

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA, STATE OF :
NEW YORK, and NEW YORK STATE :
DEPARTMENT OF ENVIRONMENTAL :
CONSERVATION, :

Plaintiffs, :

COMPLAINT

- against - :

Civil Action No. :

COUNTY OF SUFFOLK, SUFFOLK COUNTY :
DEPARTMENT OF PUBLIC WORKS and :
CHARLES J. BARTHA, Commissioner of :
the Suffolk County Department of :
Public Works, :

Defendants. :

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The United States of America, by authority of the
Attorney General of the United States and through the undersigned
Assistant United States Attorney, acting at the request of the
Administrator of the United States Environmental Protection
Agency ("EPA"), and the State of New York and New York State
Department of Environmental Conservation, by the Attorney General
of the State of New York and through the undersigned Assistant
Attorney General of the State of New York, for their complaint
against defendants aver as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Sections
309(b) and (d) of the Federal Water Pollution Control Act (the
Act), 33 U.S.C. § 1319(b) and (d), for injunctive relief and the

assessment of civil penalties against the County of Suffolk, New York, the Suffolk County Department of Public Works and Charles J. Bartha, Commissioner of the Suffolk County Department of Public Works, (collectively "Suffolk"), for violations of Sections 301, 307(b)(1) and 402(b) of the Act, 33 U.S.C. §§ 1311, 1317(b)(1) and 1342(b), and as specified in its State Pollutant Discharge Elimination System (SPDES) Permits, issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342, and related violations of New York State law. Specifically, Suffolk failed to properly implement a pretreatment program, as required under its SPDES Permits through its failure to (1) identify, locate and properly categorize its industrial users, (2) enforce pretreatment standards and issue adequate discharge certifications, (3) ensure compliance monitoring of its significant industrial users, (4) enforce and obtain remedies for noncompliance with pretreatment standards, (5) comply with the modification requirements of 40 C.F.R. Part 403, (6) maintain adequate resources needed to carry out the Industrial Waste Pretreatment Program, (7) comply with EPA's Administrative Order, and (8) comply with New York State law concerning the SPDES program and permitting.

JURISDICTION, VENUE AND NOTICE

2. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1311, 1345 and 1355, and Sections 309(b) and 309(e) of the Act, 33 U.S.C. § 1319(b) and

1319(e), and supplemental jurisdiction over the claims made pursuant to New York State law pursuant to 28 U.S.C. § 1367.

3. Venue is proper in this District pursuant to 28 U.S.C. §§ 1391(b) and (c) and 1395(a), and Section 309(b) of the Act, 33 U.S.C. § 1319(b), because Suffolk County is located and the alleged violations occurred in this judicial district.

4. Notice of the commencement of this action has been given to the State of New York as required by Section 309(b) of the Act, 33 U.S.C. § 1319(b).

PARTIES

5. Plaintiff the United States of America is acting at the request and on behalf of the Administrator of the EPA.

6. Plaintiff State of New York, as a body politic and a sovereign entity, brings this action on behalf of itself and as parens patriae, trustee, guardian and representative on behalf of all residents and citizens of New York, particularly those individuals who reside in Suffolk County and those who utilize waters of the State within Suffolk County or who may otherwise be affected by discharges from Suffolk County's sewage treatment plants to the waters of the State.

7. Plaintiff New York State Department of Environmental Conservation (DEC) is an agency of the State of New York, and is charged with the administration and enforcement of the provisions of the New York State Environmental Conservation Law (NYECL),

including Article 17, pertaining to SPDES.

8. Defendant County of Suffolk is a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

9. Defendant Suffolk County Department of Public Works (DPW) is responsible for the operation of Suffolk County's sewage treatment plants. DPW is an administrative unit of Suffolk County and as such constitutes a "municipality" within the meaning of Section 502(4) of the Act, 33 U.S.C. § 1362(4).

10. Each municipality is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

11. Charles J. Bartha is the Commissioner of DPW. As such, he is responsible for the operation of Suffolk County's sewage treatment plants. Commissioner Bartha is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5), and 40 C.F.R. § 122.2.

12. The United States reserves all claims that it may have against the State of New York under Section 309(e) of the Act. The State and DEC reserve any claims they may have against any person for the unlawful discharge of industrial waste to a publicly owned treatment works within the County of Suffolk under NYECL § 17-0825.

FEDERAL STATUTORY BACKGROUND

13. Section 301(a) of the Act, 33 U.S.C. § 1311(a),

prohibits "the discharge of any pollutant by any person," except in compliance with the requirements of that section and, inter alia, Sections 307 and 402 of the Act, 33 U.S.C. §§ 1317 and 1342. "Discharge of a pollutant" is defined in Section 502(12), 33 U.S.C. § 1362(12), to include "any addition of any pollutant to navigable waters [of the United States] from any point source."

14. Section 307(b) of the Act, 33 U.S.C. § 1317(b), directs the Administrator of the EPA to publish regulations establishing pretreatment standards governing the introduction of pollutants into publicly owned treatment works ("POTWs") for "pollutants which are determined not to be susceptible to treatment by such treatment works or which would interfere with the operation of such treatment works."

15. In accordance with Section 307(b) of the Act, 33 U.S.C. § 1317(b), the Administrator of the EPA promulgated "General Pretreatment Regulations for Existing and New Sources of Water Pollution," 40 C.F.R. Part 403.

16. Section 402(b)(8) of the Act, 33 U.S.C. § 1342(b)(8), requires that any permit issued to a POTW include conditions that require the POTW to identify the character and volume of pollutants of all its significant sources and a program to assure compliance with the applicable pretreatment standards by each source.

17. Section 402(b)(9) of the Act, 33 U.S.C. § 1342(b)(9), requires that any permit issued to a POTW include a provision to ensure that any industrial users of any POTW will comply with the requirements of the Act set forth in sections 204(b), 307, and 308, 33 U.S.C. §§ 1284(b), 1317, and 1318. The procedures for implementation of a pretreatment program by a POTW are set forth at 40 C.F.R. §§ 403.8 and 403.9.

18. Section 309(a) of the Act, 33 U.S.C. § 1319(a), authorizes the Administrator of the EPA to issue an order requiring compliance, or to commence a civil action in accordance with Section 309(b) of the Act, 33 U.S.C. § 1319(b), for appropriate relief, including a permanent or temporary injunction, when any person is in violation of, inter alia, Sections 301 or 307 of the Act, 33 U.S.C. § 1311 or 1317, or is in violation of any permit condition or limitation implementing any of such sections in a permit issued by the EPA or by a state under Section 402 of the Act, 33 U.S.C. § 1342.

19. Section 309(d) of the Act, 33 U.S.C. § 1319(d), together with Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19 provide that any person who violates, inter alia, any order issued by the Administrator under Section 309(a) of the Act, 33 U.S.C. § 1319(a), or violates Sections 301 or 307 of the Act, 33 U.S.C. § 1311 or 1317, or violates any permit condition or limitation implementing any of such sections

in a permit issued by the EPA or a state under Section 402 of the Act, 33 U.S.C. § 1342, or violates any requirement imposed in a pretreatment program, shall be subject to a civil penalty not to exceed \$32,500 per day for each such violation.

STATE STATUTORY BACKGROUND

20. Under Section 402(b) - (c) of the Act, 33 U.S.C. § 1342(b) - (c), upon application EPA may approve a state-administered program that provides, inter alia, for the issuance of discharge permits and abatement of violations of the permits and the permitting program, and upon such approval, EPA suspends the issuance of permits by EPA with respect to those discharges subject to the approved state program. On or about October 28, 1975, the Administrator of the EPA approved New York's proposal to administer the SPDES permit program in the State of New York, pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b). Since 1975, DEC has issued SPDES permits within the State's territorial boundaries that allow discharges in compliance with the Act and state law.

21. NYECL Article 17 grants DEC the authority to issue permits regulating the discharge of pollutants from new or existing outlets or point sources into waters of the State such that the discharges will conform to the requirements of the Act. Under New York law, it is "unlawful to discharge pollutants to waters of the state from any outlet or point source without a

SPDES permit . . . or in a manner other than prescribed by such permit." NYECL § 17-0803. Such discharge must be in compliance with all standards, criteria, limitations, rules and regulations promulgated or applied by DEC pursuant to NYECL Article 17, the Act, and the provisions of a permit issued under SPDES. NYECL §§ 17-0511, 17-0803, and 17-0807(4). The "waters of the State" include all lakes, rivers, creeks, and other surface waters, marshes, groundwater, and the Atlantic Ocean that are within the territorial limits of the State. NYECL § 17-0105(2).

22. Pursuant to NYECL § 17-0804, DEC has adopted rules and regulations governing SPDES permit applications. SPDES permits issued by DEC shall contain "applicable effluent limitations as required by the Act and as may be promulgated by [DEC]" including "pretreatment effluent standards" and "such other terms, provisions, requirements or conditions as may be necessary to meet the requirements of the Act." NYECL §§ 17-0809(1) and (3); 17-0811; 17-0815; and 6 N.Y.C.R.R. § 754.4(g) and (j).

23. Pursuant to NYECL § 71-1929(1), any person who violates any of the provisions of Article 17, Titles 1 through 11, or the terms of any permit issued thereunder, is liable for a penalty not to exceed \$25,000 per day for each violation, and such person may be enjoined from continuing such violations. The New York State Attorney General is empowered by NYECL §§ 71-1929(3) and 71-1931 to bring an action to recover said penalties and obtain

injunctive relief.

GENERAL ALLEGATIONS

24. Suffolk County owns and operates wastewater treatment plants which are POTWs, including Port Jefferson Sewer District No. 1 ("Port Jefferson"), Southwest Sewer District No. 3 ("Southwest"), Birchwood Sewer District No. 4 ("Birchwood"), Kingspark Sewer District No. 6 ("Kingspark"), Twelve Pines Sewer District No. 7 ("Twelve Pines"), Woodside Sewer District No. 7W ("Woodside"), Selden Sewer District No. 11 ("Selden"), Parkland Sewer District No. 14 ("Parkland"), Suffolk County Sewer District No. 18 ("No. 18"), Heartland Sewer District No. 18N ("Heartland"), SUNY Sewer District No. 21 ("SUNY"), Suffolk County Sewer District No. 22 ("No. 22") and Yaphank County Center ("Yaphank"). The POTWs receive and treat wastewater from residential, commercial and industrial sources. The design flow for the POTWs ranges in size from less than one million gallons per day to 30.5 million gallons per day.

25. Suffolk's largest POTW is Southwest, located in Babylon, New York. Southwest accepts liquid sludge from all of Suffolk's other POTWs. In addition, Southwest accepts wastes from industrial users which are subject to the pretreatment program.

26. Suffolk "discharges pollutants" within the meaning of Sections 402(6) and (12) of the Act, 33 U.S.C. § 1362(6) and

(12), from its POTWs through "point sources" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14), and NYECL § 17-0105(16). The POTWs discharge pollutants to groundwater, the Long Island Sound and the Atlantic Ocean. The Long Island Sound and the Atlantic Ocean are "navigable waters" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7), and 40 C.F.R. § 122.2. All of the aforementioned waters, including groundwater, are "waters of the State of New York." NYECL § 17-0105(2).

27. Pursuant to Section 402(b) of the Act, 33 U.S.C. § 1342(b), and applicable state law, the New York State Department of Environmental Conservation issued to Suffolk the following SPDES Permits for its POTWs ("the Permits"):

<u>Name of POTW</u>	<u>Permit No.</u>	<u>Effective Date</u>
Port Jefferson	NY0021750	6/1/01
Southwest	NY0104809	1/1/05
Birchwood	NY0079511	1/1/05
Kingspark	NY0023311	9/1/01
Twelve Pines	NY0080683	9/1/05
Woodside	NY0076988	1/1/03
Selden	NY0079324	3/1/02
Parkland	NY0065358	12/1/02
No. 18	NY0136964	2/1/05
Heartland	NY0084514	2/1/05
SUNY	NY0206644	6/1/01
No. 22	NY0066028	10/1/05
Yaphank	NY0085693	7/1/02

28. The Permits authorized and continue to authorize Suffolk to discharge particular pollutants, inter alia, suspended solids, fecal coliform bacteria, biological demand oxygen,

nitrogen, ammonia, settleable solids, chlorine, phosphorus, nitrates chloroform, methylene chloride, tetrachloroethylene, toluene, bis (2-ethylhexyl) phthalate, phenolics, arsenic, copper, mercury, thallium, zinc and dissolved oxygen into the Atlantic Ocean, the Long Island Sound and groundwater, subject to certain limitations and conditions. The permits also set forth certain monitoring, reporting and operation requirements.

29. On September 30, 1985, the EPA approved Suffolk's Industrial Waste Pretreatment Program. An Enforcement Response Plan for Suffolk was approved by EPA on September 22, 1995. Additional modifications to the Industrial Pretreatment Program were approved by EPA on February 3, 1999.

30. All of Suffolk's POTWs are required to implement the Industrial Waste Pretreatment Program in accordance with the legal authorities, policies, procedures and financial provisions set forth in Suffolk's Industrial Waste Pretreatment Program and Enforcement Response Plan, as approved by EPA, consistent with the regulations set forth at 40 C.F.R. Part 403, and pursuant to the State regulations set forth at 6 N.Y.C.R.R. § 754.4(g) and (j).

FIRST CLAIM FOR RELIEF

Failure to Identify, Locate and Categorize Industrial Users

31. Paragraphs 1 through 30 are reaverred and incorporated herein by reference.

32. Suffolk has failed, in violation of its Permits, to implement and enforce its approved Industrial Waste Pretreatment Program.

33. In accordance with 33 U.S.C. § 1342(b)(8) and as part of Suffolk's requirements under its SPDES Permits, Suffolk POTWs are required to "maintain and update, as necessary, records identifying the nature, character and volume of pollutants contributed by significant industrial users."

34. In accordance with 40 C.F.R. § 403.8(f)(2)(i), (ii) and (iii), Suffolk is required to identify and locate all possible industrial users which may be subject to the pretreatment program and to categorize their pollutant discharges ("categorical dischargers or users") and notify the industrial users of the applicable pretreatment standards and requirements.

35. Section 2.0 of Suffolk's Industrial Waste Pretreatment Program Manual states:

To achieve a significant level of control over . . . pollutants, the Industrial Waste Pretreatment Program must incorporate specific procedures which are outlined in 40 C.F.R. Part 403 and which enable Suffolk County to:

identify and locate all industrial users subject to the Industrial Pretreatment Program;

identify the character and volume of pollutants contributed by these industrial users;

notify industrial users of

applicable National Pretreatment Standards as well as any other applicable requirements of the Clean Water Act and the Resource Conservation and Recovery Act . . .

36. From 1999 through 2005, EPA conducted Industrial User Compliance Evaluation Inspections of selected industrial users serviced by Suffolk to verify compliance with applicable pretreatment standards and requirements. These inspections revealed that Suffolk failed to identify certain industrial users as facilities discharging wastewater to Suffolk's system and failed to properly categorize certain industrial users as to their industrial waste discharge. Based on these inspections, EPA, pursuant to its authority under 33 U.S.C. § 1251, et seq., issued Administrative Orders to certain industrial users for failure to comply with the reporting requirements set forth at 40 C.F.R. § 403.12. In 1999, Administrative Orders were issued to Nutritional Food Supplements, NBTY-Orville and NBTY-Bayport. In 2000, Administrative Orders were issued to Twin Labs, Interpharm, PDK Labs, Superior Supplements, Kabco, Inc. and Nastech. In 2001, Administrative Orders were issued to Premium Processing, Hi-Tech Pharmacal and Consac Industries. In 2002, Administrative Orders were issued to LNK-60 Arkay and LNK-40 Arkay. In 2004, an Administrative Order was issued to Trojan Powder Coating. In 2005, an Administrative Order was issued to ABBE Laboratories, Inc. Suffolk was notified of the issuance of and provided with

copies of the Administrative Orders.

37. In June 1997, June 1998, and June 2000, EPA conducted Pretreatment Compliance Inspections to determine Suffolk's compliance with the pretreatment requirements of its Permits. As a result, on September 28, 2000, EPA issued an Administrative Order (CWA-02-2000-3088) to Suffolk finding, inter alia, that Suffolk failed to identify, locate and categorize industrial users in violation of its Permits and its Industrial Waste Pretreatment Program.

38. Suffolk responded to the Administrative Order in a series of letters dated from November 14, 2000 through May 24, 2002. The findings of the Administrative Order and Suffolk's January 17, 2001 submission confirm that one or more industrial users were not identified by Suffolk as discharging wastewater. The findings and submissions also establish that eighteen industrial users were either not identified as categorical dischargers or were not correctly categorized based on the nature of their industrial waste discharge and, therefore, were not given notification by Suffolk of the applicable pretreatment standards and requirements. As a result, proper reporting and sampling were not performed by these industrial users and their permits and control mechanisms were not adequate.

39. On June 25, 2002, EPA conducted an additional Pretreatment Compliance Inspection of Suffolk, the results of

which revealed violations similar to those found in prior audits and inspections. For example, the inspection revealed that at least two other industrial categorical users were not properly identified by Suffolk prior to their commencement of discharges. These industrial categorical users began discharging in 1987 and 1982, but permits reflecting the appropriate discharge requirements were not issued to them by Suffolk until 1999 and 2001.

40. Each day of Suffolk's failure to identify, locate and categorize industrial users constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of its SPDES permits.

41. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty-two thousand five hundred dollars (\$32,500) per day for each such violation.

SECOND CLAIM FOR RELIEF

Failure to Enforce Pretreatment Standards and Issue Adequate Discharge Certifications

42. Paragraphs 1 through 41 are reaverred and incorporated herein by reference.

43. Suffolk has failed, in violation of its Permits, to

implement and enforce its approved Industrial Waste Pretreatment Program.

44. As part of its requirements under its SPDES Permits and in accordance with 40 C.F.R. § 403.8(f)(1)(ii), Suffolk is required to "[e]nforce categorical pretreatment standards promulgated pursuant to section 307(b) and (c) of the Act, prohibitive discharges as set forth in 40 C.F.R. § 403.5, and local limitations specified in Article V-3(a) of the County of Suffolk Local Law" In addition Suffolk's Permits, in accordance with 40 C.F.R. § 403.8(f)(1)(iii), require Suffolk to:

Issue special permits to all significant industrial users. Special permits shall contain limitations, sampling protocols, compliance schedules, if appropriate, reporting requirements, and appropriate standard conditions.

45. Suffolk's Industrial Waste Pretreatment Program requires the issuance of a special connection permit for all industrial users prior to connection to the sewerage system. Under 40 C.F.R. § 403.8(f)(1)(iii) and Suffolk's SPDES Permits, Suffolk is required to issue permits or control mechanisms to industrial users. Suffolk issues Discharge Certificates as permits or control mechanisms under 40 C.F.R. § 403.8(f)(1)(iii) after the connection is made and prior to discharge. These Discharge Certifications set out the conditions under which the industrial user will be allowed to continue to discharge. Such conditions include effluent and monitoring requirements.

46. From 2000 through 2003, EPA conducted several reviews of Suffolk's Industrial Pretreatment Program, including Pretreatment Compliance Inspections, Compliance Evaluation Inspections and pretreatment audits. These reviews revealed repeated failures by Suffolk to enforce pretreatment standards and issue adequate enforcement controls. Suffolk mischaracterized certain industrial users and, therefore, did not have all the correct limitations in certain Discharge Certifications; certain categorical industrial users did not have Discharge Certifications prior to discharge; and industrial users which are subject to categorical standards and that have their wastewater hauled to Suffolk had not been issued Discharge Certifications that met the requirements of 40 C.F.R. § 403.8(f)(1)(iii) prior to the facilities' commencement of their discharges.

47. From 1999 to 2002, Suffolk failed to issue Discharge Certifications to 13 significant industrial users in accordance with the requirements of 40 C.F.R. Part 403.

48. Each day of Suffolk's failure to enforce pretreatment standards and issue adequate Discharge Certifications constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of its SPDES Permits.

49. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104

Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty-two thousand five hundred dollars (\$32,500) per day for each such violation.

THIRD CLAIM FOR RELIEF

Failure to Ensure Compliance Monitoring of Industrial Users

50. Paragraphs 1 through 49 are reaverred and incorporated herein by reference.

51. Suffolk has failed, in violation of its Permits, to implement and enforce its approved Industrial Waste Pretreatment Program.

52. In accordance with 40 C.F.R. § 403.8(f)(1)(v) and (2)(v), 40 C.F.R. § 403.12(g), the conditions of Suffolk's SPDES Permits and its Industrial Waste Pretreatment Program, Suffolk is required to establish monitoring programs in permits, or conduct compliance monitoring, to evaluate whether industrial users are complying with all applicable pretreatment standards and requirements, including national categorical pretreatment standards. Suffolk is also required to conduct annual inspections and sampling of each significant industrial user and maintain records of its inspections and sampling of industrial users.

53. Suffolk's failures to implement compliance monitoring

programs include, but are not limited to, the following: failure to sample and inspect significant and categorical industrial users at the minimum frequency required by permits and pretreatment regulations; failure to require submission of Baseline Monitoring Reports and semi-annual periodic reports; and failure to maintain records of its inspections and sampling of industrial users.

54. From 1999 to the present, EPA's inspections revealed that for at least 28 categorical industrial users, Suffolk's records did not include records of either sampling or Baseline Monitoring Reports. Suffolk's failures prevent both Suffolk and EPA from properly evaluating compliance with national categorical pretreatment standards and hinder enforcement of those standards.

55. Each day of Suffolk's failure to implement and enforce compliance monitoring of industrial users pursuant to its approved Industrial Pretreatment Program constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of its SPDES permits.

56. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty-two thousand five hundred dollars (\$32,500) per day for

each such violation.

FOURTH CLAIM FOR RELIEF

Failure to Enforce and Obtain Remedies for Noncompliance With Pretreatment Standards

57. Paragraphs 1 through 56 are reaverred and incorporated herein by reference.

58. As part of its requirements under its SPDES Permits, Suffolk is required to enforce categorical pretreatment standards, discharge standards and local limitations. At a minimum, Suffolk is required to "enforce and obtain remedies for noncompliance by any significant industrial users" and to follow the procedures set forth in its Enforcement Response Program.

59. Suffolk has failed to serve notice upon industrial users who have violated or are violating pretreatment standards or requirements, and where noncompliance continues, to escalate enforcement to bring industrial users into compliance.

60. Pursuant to 40 C.F.R. § 403.8(f)(2)(vii), Suffolk is required to issue a public notice listing all industrial users that are in significant noncompliance on an annual basis. Suffolk has failed to issue public notices and, where it has issued public notices, has failed to identify all industrial users that are in significant noncompliance.

61. Each day of Suffolk's failure to enforce compliance with pretreatment standards constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of

its SPDES permits.

62. Unless this Court grants injunctive relief, the defendants will continue to violate the Act.

63. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty two thousand five hundred dollars (\$32,500) per day for each such violation.

FIFTH CLAIM FOR RELIEF

Failure To Comply With Modification Requirements of 40 C.F.R. Part 403

64. Paragraphs 1 through 63 are reaverred and incorporated herein by reference.

65. Pursuant to 40 C.F.R. § 403.18(b)(4), a decrease in the amount of self monitoring by industrial users is a substantial modification to an Industrial Waste Pretreatment Program of which the public must receive notice and which must be approved by the Environmental Protection Agency.

66. In a letter dated March 9, 1995, Suffolk submitted a request for a modification to its Industrial Waste Pretreatment Program to, among other things, allow Suffolk to perform all compliance monitoring for its industrial users in lieu of self-monitoring. EPA did not approve the request.

67. Since 1995, without EPA approval or notice to the public, Suffolk has not included self-monitoring requirements in its Discharge Certifications for industrial users. Suffolk has informed EPA and its industrial users that Suffolk will do such monitoring for the industrial users.

68. On December 5, 1995, Suffolk submitted a revised modification request which, among other things, requested changes to the Suffolk County Code related to the use of sewers. On February 3, 1999, EPA approved the requested change to the Suffolk County Code related to the use of sewers.

69. Suffolk did not adopt the changes to its Code until June 30, 2004. Therefore, the Suffolk County Code was not in compliance with Suffolk's currently approved Industrial Waste Pretreatment Program.

70. As a result of its failure to require industrial users to conduct self-monitoring and its failure to adopt the approved changes to its Code related to the use of sewers, Suffolk is not in compliance with its Industrial Waste Pretreatment Program.

71. Each day of Suffolk's failure to comply with the modification requirements of its Industrial Waste Pretreatment Program constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of its SPDES permits.

72. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104

Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty-two thousand five hundred dollars (\$32,500) per day for each such violation.

SIXTH CLAIM FOR RELIEF

Failure to Maintain Adequate Resources

73. Paragraphs 1 through 72 are reaverred and incorporated herein by reference.

74. Pursuant to 40 C.F.R. § 403.8(f)(3), Suffolk is required to maintain "sufficient resources and qualified personnel."

75. From 2000 to 2004, EPA conducted several reviews of Suffolk's Industrial Pretreatment Program. The results revealed that Suffolk's staffing levels are not sufficient to adequately implement its Industrial Waste Pretreatment Program. Specifically, Suffolk has failed to maintain resource levels as required by its approved pretreatment program. As a result, Suffolk has not properly implemented its Industrial Waste Pretreatment Program.

76. Each day of Suffolk's failure to maintain adequate resources constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of its SPDES permits.

77. Pursuant to Section 309(b) and (d) of the Act, 33

U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty-two thousand five hundred dollars (\$32,500) per day for each such violation.

SEVENTH CLAIM FOR RELIEF

Failure to Comply with Administrative Order

78. Paragraphs 1 through 77 are reaverred and incorporated herein by reference.

79. On September 28, 2000, pursuant to Section 309(a) of the Act, 33 U.S.C. § 1319(a), EPA issued an Administrative Order (CWA-02-2000-3088) to Suffolk finding, inter alia, that Suffolk failed to identify, locate and categorize industrial users in violation of its Permits, its Industrial Waste Pretreatment Program and its Enforcement Response Program.

80. Suffolk responded to the Administrative Order in a series of letters dated from November 14, 2000 through May 24, 2002. The findings of the Administrative Order and Suffolk's January 17, 2001 submission confirm that one or more industrial users were not identified by Suffolk as discharging wastewater. The findings and submissions also establish that eighteen industrial users were either not identified as categorical dischargers or were not correctly categorized based on the nature

of their industrial waste discharge and, therefore, were not given notification by Suffolk of the applicable pretreatment standards and requirements. As a result, proper reporting and sampling were not performed by these industrial users and their control mechanisms were not adequate.

81. The Administrative Order required Suffolk to complete an Industrial Waste Survey by February 28, 2001. EPA granted Suffolk an extension to December 15, 2001. On December 6, 2001, Suffolk submitted a portion of the required Industrial Waste Survey. The complete inventory required by EPA was not submitted until January 30, 2004.

82. The Administrative Order required Suffolk to conduct a technical analysis of local limits reflecting all of the prohibitions at 40 C.F.R. §§ 403.5(a)(1) and (b). Suffolk submitted a technical analysis of local limits for four of its POTWs on October 31, 2005 and for the remainder of its POTWs on January 17, 2006.

83. Suffolk failed to comply fully with the administrative order by failing to implement and enforce fully its approved Industrial Waste Pretreatment Program as required by its SPDES Permits, by failing to submit timely a completed Industrial Waste Survey and by failing to submit timely a technical analysis of local limits.

84. Each day of Suffolk's failure to comply with the

administrative order constitutes a separate violation of Section 301 of the Act, 33 U.S.C. § 1311, and the conditions of its SPDES permits.

85. Pursuant to Section 309(b) and (d) of the Act, 33 U.S.C. § 1319(b) and (d), together with Pub. L. 101-410, 104 Stat. 890, 28 U.S.C. § 2461 note, and 40 C.F.R. Part 19, Suffolk is subject to injunctive relief and is liable for civil penalties for each day of each violation averred in this claim, not to exceed thirty-two thousand five hundred dollars (\$32,500) per day for each such violation.

EIGHTH CLAIM FOR RELIEF

State Law Claim

86. Paragraphs 1 through 85 are reaverred and incorporated herein by reference.

87. Pursuant to NYECL §§ 17-0809(1) and (3), and 17-0811, 17-0815, 6 N.Y.C.R.R. § 754.4(g) and (j), Suffolk is required to implement and enforce its approved Industrial Waste Pretreatment Program.

88. Suffolk has failed to properly implement and enforce its approved Industrial Waste Pretreatment Program, as required under its SPDES permits, and in violation of NYECL §§ 17-0511, 17-0803, and 17-0807(4).

89. Pursuant to NYECL §§ 71-1929 and 71-1931, Suffolk is subject to injunctive relief and is liable for civil penalties

for each day of each violation, not to exceed twenty-five thousand dollars (\$25,000) per day for each such violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court:

1. Order Suffolk to comply with all terms and conditions of its approved Industrial Waste Pretreatment Program, its SPDES Permits, Sections 301, 307 and 402 of the Act, 33 U.S.C.

§§ 1311, 1317 and 1342, and 6 N.Y.C.R.R. § 754.4(g) and (j), including but not limited to the deficiencies set forth above;

2. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d) and 40 C.F.R. Part 19, assess civil penalties payable to the United States against Suffolk up to \$32,500 per day for each violation of Suffolk's Industrial Waste Pretreatment Program, its SPDES Permits, and Sections 301, 307 and 402 of the Act, 33 U.S.C. §§ 1311, 1317 and 1342;

3. Pursuant to NYECL §§ 71-1929 and 71-1931, assess civil penalties payable to the State of New York against Suffolk up to \$25,000 for each day of each violation of NYECL §§ 17-0511, 17-0803, and 17-0807(4);

4. Award the United States, the State of New York, and DEC their costs and disbursements of this action; and

5. Grant the United States, the State of New York, and DEC

such other relief as this Court deems appropriate.

Dated: , 2006

Respectfully submitted,

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